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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,996	11/26/2003	Ricky Ah-Man Woo	7768MD	9564

27752 7590 03/02/2007  
THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL BUSINESS CENTER - BOX 161  
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CINCINNATI, OH 45224

EXAMINER
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HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/722,996	<b>Applicant(s)</b> WOO ET AL.	
	<b>Examiner</b> John R. Hardee	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3,4,6-18 and 30-33 is/are pending in the application.  
4a) Of the above claim(s) 6-10 and 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,4,11,15-18 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant is reminded that a restriction requirement remains in effect. Claims 6-10 and 12-14 remain withdrawn from consideration by the examiner as being drawn to species non-elected with traverse, the election requirement having been made final in a previous office action.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 3, 4, 11, 15-18 and 30-33 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Trinh et al., US 5,714,137, in view of Behan et al., US 5,676,163 and Wilsch-Irrgang et al., US 5,861,371. The Trinh reference discloses aqueous, odor absorbing compositions for use on inanimate surfaces. The compositions comprise about 0.1% to about 5% by weight of solubilized, uncomplexed cyclodextrin. The compositions are essentially free of any material which would stain or soil fabric, and they have a pH of greater than about 3 (abstract). Suitable cyclodextrins, including combinations of cyclodextrins, are disclosed at col. 5, lines 8+. Cavities should remain uncomplexed (col. 4, lines 8-10, col. 11, lines 59-60). This can be accomplished through the use of aqueous solvents and appropriate choice of perfume materials. Perfume is present at up to about 0.5% (col. 11, lines 40+). Most preferably, at least about 75% of the perfume ingredients should have a Clog P of about 3 or smaller (col. 16, lines 3+),

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and, most preferably at least about 75% of the perfume materials should come from the table beginning at the middle of col. 12. Note that P. T. buccinal, cymal and hexyl cinnamic aldehyde are among these materials. Materials with a Clog P of this magnitude are relatively hydrophobic, having a thousand-fold preference for octanol over water. Note the disclosure at col. 12, lines 4+, that most preferably at least about 75% by weight of the perfume materials will have molecular weights of about 130 to about 290. Polyacrylic acid or polyacrylate may be added, as may soluble zinc salts at about 0.1% to about 10% (col. 17, lines 27+). Suitable surfactants are disclosed at col. 20, lines 13+. These surfactants are taught to solubilize or emulsify undissolved materials such as perfumes. Water soluble cationic polyamines may be added as well. This reference differs from the claimed subject matter in that it does not specifically disclose use of a class I or II aldehyde in the recited amounts, or of an odor blocker in the recited amounts.

Behan et al. teaches at col. 2, line 51 that hexyl cinnamic aldehyde, 2-methyl-3-(4'-isopropylphenyl)propanal, also known as cymal, and 2-methyl-3-(4'-tert-butylphenyl)propanal, also known as P. T. buccinal, are class II aldehydes, and Wilsch-Irrgang et al. teaches at col. 3, lines 7+ that terpenes, including alpha-terpineol, are useful deodorizers in cleaning compositions. Note also the disclosure in applicant's specification at p. 16, lines 15+ that the odor blockers and class I and II aldehydes contemplated for use in these compositions are those disclosed in the cited secondary references.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in an odor absorbing composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary:

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990). Regarding packaging with instructions, both of these are obvious expedients, and the specific content of the instructions does not add patentable weight.

Regarding applicant's newly added language regarding pre-emulsification, applicant is reminded that an invention defined by a product-by-process claim is a product. MPEP 806.05(f), *In re Bridgeford*, 149 USPQ 55. Burden is on the applicant to show product differences in product by process claims. *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

### ***Response to Arguments***

4. Applicant's arguments filed December 1, 2006 have been fully considered but they are not persuasive. Applicant argues that Trinh does not disclose emulsions of hydrophobic perfume and specifically recited surfactants. While this is correct, it is not

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persuasive because Trinh discloses at the top of col. 20 that undissolved materials such as perfumes may be dissolved using surfactants, including some of those recited by applicants, which may serve to emulsify the perfume. Regarding particle size, this would appear to be a function of the amount of perfume, emulsifying surfactant and shear applied to the mixture of same. Unless applicant can demonstrate that some unexpected result occur when emulsions of this particle size range are used, it would appear that this limitation is not entitled to patentable weight, as it could be realized by performing the emulsification step disclosed in the reference.

Applicant argues that the examiner is "confused" in suggesting that the claims employ product-by-process limitations. The examiner was not confused when product-by-process limitations were present in the claims, and he remains unconfused now that these limitations have been removed.

Applicant's arguments regarding uncomplexed perfume (p. 12) are well taken, but the reference clearly discloses that uncomplexed perfume may be present in the Trinh compositions, and that this can be solubilized or emulsified by the addition of surfactant.

5. Applicant's efforts to advance prosecution are appreciated. This action is NOT FINAL.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through

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Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee  
Primary Examiner  
February 27, 2007